

1. Heard learned counsel on record.
2. This Court ordered notice before admission on 5.6.2006 and granted interim direction for a limited period and subsequently thereof, the same was extended. In view of the fact that the pleadings were complete, rule nisi was issued on 30.6.2006 and thus the matter is coming up for final hearing today.
3. The writ petition is filed by Anwar-ul-Uloom Educational Association, Hyderabad represented by its Secretary praying for a writ of Mandamus or other appropriate order in the nature of a writ directing the respondent authorities not to deal with the property of Anwar-ul-Uloom Junior College in Survey No.260 at Nirmal town of Adilabad District otherwise in accordance with law, after declaring the impugned action in demolishing the compound wall and dais as arbitrary, discriminatory and violative of Articles 14, 19 (1A) and 300A of Constitution of India, rule of law and principles of natural justice, as also Ex.P.4 notice dated 25.5.2006 bearing No.G1/298/2006 and also award a sum of Rs.5,00,000/- lakhs towards damages and compensation for high handedly demolishing and destroying the compound wall and dais of the petitioner college without following procedure of law and thus prayed for passing suitable orders.
4. Sri Nalin Kumar, learned counsel representing the petitioner had taken this Court through the affidavit filed in support of the writ petition, the counter affidavit and also the reply affidavit and would contend that no notice, in fact, was issued and the notice which is being produced now, in fact, had been issued subsequent to the demolition activity and hence it cannot be said that the principles of natural justice had been complied with. The learned counsel, in all fairness, would submit that as far as the claim of compensation for the high handed action is concerned, liberty may be given to the petitioner to approach the

competent civil court in relation thereof, since it would be difficult for the writ Court to evaluate the actual compensation or damages in the facts and circumstances of the case.

5. On the contrary, Sri Polisetty Radhakrishan, learned counsel representing the 1st respondent – Commissioner, Nirmal Municipality, would contend that there was proper service of notice as can be reflected from the records produced before this Court. The learned counsel also had placed the approved plan and would contend that these are all disputed questions of fact which cannot be gone into in a writ petition and hence the proper remedy available to the petitioner, at the best, may be to approach the competent Civil Court. The learned counsel also had placed the photographs before this Court and would explain that under the guise of the interim orders, the petitioner is further obstructing the activity at the spot. Even in public interest, the interim order is to be vacated and the writ petition is to be dismissed, in the facts and circumstances of the case.

6. The writ petitioner states that it purchased the property in plot Nos.19 to 36 in survey No.260 totally admeasuring 38,510 sq.ft under 11 registered sale deeds executed in favour of the petitioner in 1996. As per the sale deeds executed in favour of the petitioner, the entire extent is 38,510 sq. ft and the same is private property and entire property had been conveyed in favour of the petitioner. At the time when the petitioner purchased the above property, there were already buildings on the property having a plinth area of 3,837.57 sq.ft. The petitioner started a junior college in the said building after duly obtaining permission from the State Government which is being renewed from time to time. It is also stated that the last renewal was granted by order dated 20.9.2005 for the academic year 2005-06. It is further stated that the petitioner in the year 1997 applied for permission

to construct a new building in the aforesaid property. The respondent municipality considering the application of the petitioner also granted permission for construction of ground floor and first floor. It is further stated that after permission was granted, a compound wall was constructed on four sides and pillars had been raised and a dais had been constructed in the center of the southern boundary of the land. The petitioner has been running a junior college in the said premises from 1993-96 as a tenant of the premises and thereafter as the owner. It is also stated that to the utter surprise of the petitioner, on 25.5.2006, the respondent municipality high handedly and forcibly entered the junior college premises without giving any notice and without giving any opportunity of being heard, demolished the dais and the compound wall behind the dais. When the Principal of the college protested, the staff of the municipality and the 2nd respondent Contractor informed him that they were executing the work of demolition as per the orders of the authorities and that they were not concerned with the question whether the petitioner had been given any information or not. The Principal of the College submitted an application dated 26.5.2006 protesting the demolition. The 1st respondent received representation of the Principal on 26.5.2006 during daytime. However, on the same day at about 6.30 p.m., the respondent served a notice purportedly dated 25.5.2006 stating that as per the Gram Panchayat lay out dated 6.1.1987, a road is existing in the sanctioned lay out and as such the constructed compound wall should be removed within 24 hours. It is further stated that there is no such lay out making provision for a road in the private property of the petitioner which is evident from the sanctioned plan granted by the municipality way back in the year 1997. The registered document executed in favour of the petitioner would also show that the entire

property purchased by the petitioner is private property and that there is no road for the public passage through the private property of the petitioner. Several other factual details also had been narrated in paras 7,8 and 9 and in such circumstances, it is stated that the petitioner had no other remedy except to approach this Court by invoking Article 226 of the Constitution of India.

7. The 1st respondent filed counter affidavit wherein several of the allegations were denied and it is stated that the petitioner is put to strict proof of those allegations. It was also further pleaded in paras 5,6 and 7 as hereunder:-

“It is respectfully submitted that in reply to para 4 of the affidavit, I submit that the land owners developed the land by way of a layout into residential plots the roads are earmarked, such roads are vest in the Municipality under Section 190 of Municipalities Act. And no one has got right to build any wall or erect any fence or other obstructions over the street under Section 189. In the present case, the land owners have converted the land into plots by way of a layout and its surrounding areas under the Manjulapur Grampanchayat's limits and the Sarpanch, Grampanchayat, Manjulapur approved the layout. The competent authority has approved the layout in January, 1987, and in which there are two roads between the plot Nos.19 to 36. In the year 1993 a part of Manjulapur Grampanchayat is merged with the Nirmal Municipality. The alleged purchase of the plots by the petitioner does not convey the title to the land earmarked as roads. More over, the petitioner did not purchase the road portion and he has purchased only the layout plots made by the competent authority. The area earmarked as roads cannot be alienated by anyone in the approved layout. As such the petitioner has got no exclusive right over the area earmarked for the road in the approved layout of the Grampanchayat. With regard to the permission of the State Government this respondent has no knowledge about the same and the petitioner herein is put to strict proof of the same.

It is respectfully submitted that in reply to para 5 of the affidavit, I submit that the petitioner has obtained permission for construction of Ground and First Floor and the same was granted in the plots of the petitioner i.e., Plot Nos.19 to 36 only

and not in the road portion. It is incorrect to say that the petitioner constructed a compound wall on the four sides, pillars have been raised and dias has been constructed in the center of the Southern boundary of the land and the same is invented for the purpose of the present Writ Petition. In fact there is no such dias nor any structure is there. Recently the petitioner closed the road which was shown in the Grampanchayath Layout with a wall. Duly following the procedure contemplated under the Municipalities Act, this office has taken initiative to demolish the wall in road portion, and this office has tried to serve the notice in person but nobody was present at Junior College premises as it was in closed condition. Hence this office has pasted notice on the side of the compound wall on 25-5-2006. A personal copy is also served on the principal of the college on 26-5-2006. Consequently the Principal of the petitioner College has approached this office with photostat copies of certificates and he has failed to prove that it is not a road. He himself accepted that he has purchased the plots only. As this office has got a reason to prove it as road and explaining the same to the Principal on 27-5-2006 the compound wall was demolished by this office as the petitioner failed to produce sufficient material to establish that there is no road in the approved layout of the Grampanchayath.

It is respectfully submitted that in reply to para 6 of the affidavit, I submit that the then Municipal Commissioner has accorded permission for construction of building without verifying the width of 25' road. In the absence of layout map of Grampanchayat Manjulapur, the permission may be accorded in such a manner. The petitioner has misrepresented this office knowingly by showing it as private road. The above permission or registration does not confer any right over the approved road by the competent authority i.e., Sarpanch, Manjulapur. More over, the petitioner's predecessors Subangi educational society has been taken permission for construction of building duly showing the above land as plots and roads as per the approved layout of the Grampanchayat. Once the roads were handed over to the local body as per the approved layout of the Grampanchayath the petitioner cannot claim that it is his property. The other contentions made in this para are specifically denied and the petitioner is put to strict proof of the same. After taking into consideration of the representation dt. 26-5-2006 as the petitioner failed to produce the material to establish that the said road is a private road, the demolition has

taken place.”

8. A reply affidavit was filed again reiterating the same stand taken in the affidavit filed in support of the writ petition. In the reply affidavit, the allegations made in the counter affidavit were denied. It was also pleaded that the Roads, purportedly made while making layout, do not vest in the Municipality under Section 190 of the Municipalities Act as they are not public roads. It was further pleaded that as they are not public roads, the municipality cannot exercise any control over the same, and hence it is not correct to say that no one has any right to build any wall or erect any fence or other obstruction over the street which is not a public street and that the road in the layout is only a layout for the plots sold in favour of the petitioner and the said private road in the layout is not connected to any public road. Therefore, the Municipality cannot claim any right over such private road. It is also stated that the petitioner acquired the entire land from their vendors under different sale deeds. The other allegations also had been denied. Specific stand had been taken that the Municipality has no right to demolish the wall in the private road portion and the other allegations also had been denied. The forcible demolition also had been specifically pleaded. Several other factual details had been narrated in the reply affidavit.

9. As can be seen from the respective pleadings of the parties, the affidavit filed in support of the Writ Petition, the counter affidavit and also the reply affidavit, it appears that after commencement of the demolition activity, the Municipality thought of issuing the notice in question with a view to rectify the defect. This appears to be clear from the record. The reason being even the record produced before the Court would go to show that the notice dated 25-5-2006. It is

specifically pointed out that the notice, in fact, was affixed to the institution and hence, there is proper service of notice. No doubt this aspect had been denied. In the light of the specific allegations made in the affidavit filed in support of the Writ Petition, the stand taken by the petitioner that this is an after thought and a notice dated 25-5-2006 had been thought of only with a view to get over the stand taken by the petitioner, appears to be a sustainable stand in the facts and circumstances of the case. This Court is not inclined to express any opinion about the other merits and demerits of the matter. It is true that there are certain factual controversies between the parties. As far as the question of claiming compensation is concerned, inasmuch as this being the writ Court, the factual aspects cannot be decided. The petitioner is at liberty to approach competent civil Court claiming the said relief, if the petitioner is so advised. On the aspect of violation of principles of natural justice, inasmuch as the demolition activity was commenced and subsequent thereto the first respondent-municipality had thought of issuing this notice to cure the defect, it cannot be said that the principles of natural justice had been complied with.

10. In view of the same, without expressing any opinion about the other factual controversies between the parties, the first respondent is hereby directed to put the petitioner on notice, in accordance with law, and take appropriate decision in the facts and circumstances, and to further proceed in accordance with law. Except giving this direction, no other directions can be given in the present writ petition. The writ petition is accordingly disposed of. No order as to costs.

11. However, this will not come in the way of either of the parties agitating their rights before a competent civil court.

msv/smr / mdaa